

Wiley Consumer Protection Download (May 24, 2021)

May 24, 2021

*Published May 24, 2021

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Welcome to Wiley's update on recent developments and what's next in consumer protection at the Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC). In this newsletter, we analyze recent regulatory announcements, recap key enforcement actions, and preview upcoming deadlines and events. We also include links to our articles, blogs, and webinars with more analysis in these areas. We understand that keeping on top of the rapidly evolving regulatory landscape is more important than ever for businesses seeking to offer new and ground-breaking technologies. Please reach out if there are other topics you'd like to see us cover or for any additional information.

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Regulatory Announcements

FTC Reports Increase in Cryptocurrency Scams. On **May 17**, the FTC published a consumer protection data spotlight focused on an increase in reported cryptocurrency investment scams. Specifically, consumers reported losing more than \$80 million as a result of such scams since October 2020. Of the 7,000 consumer reports, the

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median reported loss was \$1,900, and this amount represents a 1000% increase in reported losses over the previous year. Additionally, consumers aged 20 to 49 were over five times more likely to report losing money to a cryptocurrency investment scam than older age groups, and their losses were higher, with consumers in the 20 to 49 bracket reporting a median loss of \$3,250.

Significant Enforcement Actions

CFPB Issues Consent Order Against Auto Lender for Allegedly Unlawful LDW Practices. On **May 21**, the CFPB issued a consent order against 3rd Generation, Inc., doing business as California Auto Finance (California Auto), for allegedly charging illegal interest for late payments on its Loss Damage Waiver (LDW) product without customers' knowledge. An LDW is a product that covers customer debt cancellation in the event of either a total vehicle loss or the cost of a repair. The CFPB specifically alleges that California Auto violated the Consumer Financial Protection Act (CFPA) by charging 5,800 customer accounts a total of \$565,813 in interest on late payments related to the LDW fee, without disclosing that the LDW fee is added to the principal balance of the underlying loan, amortized, and subject to interest charges. In addition to refunding consumers for the illegal interest charges, the CFPB's consent order requires California Auto to pay a \$50,000 civil penalty.

FTC Files Complaint Against Internet Service Provider for Misrepresenting Broadband Speeds. On **May 19**, the FTC and law enforcement agencies from Arizona, Indiana, Michigan, North Carolina, Wisconsin, and California sued Frontier Communications (Frontier) for allegedly providing Internet services to consumers for lower speeds than promised. Additionally, the FTC's complaint alleges that Frontier charged consumers for more expensive and higher-speed services than those provided. The FTC's allegations pertain to Frontier's Digital Subscriber Line Internet service and involves purported violations of the FTC Act and various state laws.

FTC Prohibits Student Loan Debt Relief Operators from Providing Debt Relief Services. On **May 17**, the FTC announced a settlement with Student Advocates Team, LLC, Progress Advocates Group, LLC, Student Advocates Group, LLC, and Assurance Solutions Services, LLC. In a 2019 complaint, the FTC alleged that Student Advocates Team and other defendants charged illegal upfront fees that consumers believed were applied to their student loan payments and falsely promised that their services would permanently lower or eliminate consumers' loan payments. The settlement orders ban the defendants from providing debt relief services and include a monetary judgement of over \$24.5 million.

CFPB Takes Action Against Debt-Settlement Company for Charging Allegedly Unlawful Fees. On **May 17**, the CFPB requested that the U.S. District Court for the District of Massachusetts enter a final judgement that would require DMB Financial, LLC (DMB) to pay consumers at least \$5.4 million for allegedly charging consumers unlawful fees and failing to provide required disclosures to consumers under the Telemarketing Sales Rule (TSR) and the CFPA. According to the CFPB's December 2020 complaint, DMB allegedly violated the TSR by charging fees to consumers before they had made a payment to a creditor under a settlement agreement. Additionally, the CFPB alleged that DMB violated the CFPA by failing to disclose the amount that a consumer must save before making a settlement offer, along with the amount of time that it would take to make a settlement offer. The proposed order would, among other things, impose a \$7.7 million judgement

against DMB.

FTC Commences Enforcement Action Against CBD Marketer. On **May 17**, the FTC announced a law enforcement action against Kushly Industries LLC (Kushly) for allegedly making false or misleading claims regarding cannabidiol (CBD) products. According to the FTC's complaint, Kushly allegedly made false or unsubstantiated claims that their CBD products could treat or cure acne, psoriasis, cancer, and multiple sclerosis. The FTC's proposed administrative order would require Kushly to pay \$30,583.14, which represents the amount that consumers paid to Kushly for products sold using allegedly deceptive marketing.

Upcoming Comment Deadlines and Events

FTC Requests Comments on Digital "Dark Patterns." Submissions are due **May 29** on the FTC's Request for Comments on "digital dark patterns," which is a term used to describe a range of potentially deceptive user interface designs on websites and applications. Specifically, the FTC is seeking comment on several topics that were discussed at its April 29 event – Bringing Dark Patterns to Light: An FTC Workshop. That workshop examined the ways in which user interfaces can have the intentional or unintentional effects of obscuring, subverting, or impairing consumer autonomy or decision-making. The workshop considered how dark patterns differ from sales tactics used by brick-and-mortar stores; whether some groups of consumers are unfairly targeted; and whether there are additional rules or standards needed to protect consumers.

CFPB Seeks Input on Financial Institutions' Use of AI. Comments are due **July 1** (extended from June 1) on a Request for Information released collectively by the CFPB; the Board of Governors of the Federal Reserve System's Bureau of Consumer Financial Protection; the Federal Deposit Insurance Corporation; the National Credit Union Administration; and the Office of the Comptroller of the Currency. The five agencies, which routinely coordinate to offer interagency guidance, are gathering information on financial institutions' use of artificial intelligence (AI) for fraud prevention, the personalization of services, credit underwriting, and a number of other operations. Among other things, the Request for Information seeks comment to understand the use of AI; appropriate governance and risk management controls over AI; and challenges in developing and managing AI.

More Analysis from Wiley

Wiley Achieves Perfect Score on Human Rights Campaign's 2021 'Best Places to Work for LGBTQ Equality' List

Wiley Among First Organizations to Join FCBA's New Diversity Pipeline Program

Key Takeaways from the AMG Capital Management v. FTC Decision

Supreme Court Curbs FTC Power to Seek Monetary Relief

Privacy in Focus: New at the FTC: Agency Forges Ahead Even As Supreme Court Curbs Authority

Privacy in Focus: Five Considerations for Navigating Privacy Compliance Under Virginia's and California's New Laws

Privacy in Focus: EU Presses Ahead on AI Regulation – With Global Implications

FTC Outlines Approach to Discrimination in AI and Foreshadows Potential Enforcement

Virginia's New Privacy Law: How to Navigate the New Privacy Framework

Supreme Court Argument Analysis: TransUnion LLC v. Ramirez

FemTech: Biases and Data Privacy

Virginia Enacts Comprehensive Privacy Legislation

California Attorney General Issues Further Revisions to CCPA Opt-Out Requirements

California Privacy Rights Act – What Does It Mean For You?

SCOTUS Provides TCPA Clarity by Rejecting Expansive Autodialer Definition

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